

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
IN CLERKS OFFICE
2005 OCT 21 P 1:23

REGAL FABRICS, INC.,

Plaintiff,

v.

KOBA, INC., an Illinois corporation;
IBR CORPORATION, d/b/a Harbortown Division, an
Illinois corporation; and
SHOPKO STORES, INC., a Wisconsin corporation,

Defendants.

CIVIL ACTION
NO. 04-10961 RWZ

DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION
TO REOPEN AND ENFORCE SETTLEMENT AGREEMENT

The defendants, IBR Corporation, Koba, Inc. and Shopko Stores, Inc., oppose the Plaintiff's Motion to Reopen and Enforce Settlement Agreement.

The grounds for the defendants' opposition are:

1. The insurer for the defendants, IBR and Shopko has contributed \$108,000 to the settlement. A copy of the insurer's check is attached hereto.
2. The defendant Shopko has contributed \$10,000 to the settlement. A copy of Shopko's check is attached hereto.
3. The defendant IBR has encountered recent financial difficulties and has not been able to contribute its \$50,000 portion of the settlement, as stated in the Affidavit of Judith J. Brosnan, submitted herewith. However, IBR is confident that its cash flow will improve and that it will be able to pay this obligation before the end of November 2005.
4. The reasons for IBR's unexpectedly poor financial performance are as follows:
 - a. Back to school sales were extremely weak in August and September.

b. IBR's largest customer, Bed Bath & Beyond withheld payment of IBR's account because it could not sell some of IBR's merchandise. This action was unjustified and unlawful. Bed Bath & Beyond is currently holding \$123,000 of IBR's money.

5. IBR's receivables will start to be paid at the end of October and through November. IBR expects that it will pay the \$50,000 before the end of November, if not earlier.

6. IBR regrets having caused this situation to occur. When IBR agreed to the settlement, IBR did not expect that it would be unable to contribute the \$50,000 in a timely manner. IBR apologizes to the Court and to Regal Fabrics for this delay and assure the Court that it will be able to pay its \$50,000 share before the end of November, if not earlier.

Defendants,

IBR CORPORATION
KOBAYASHI, INC. and
SHOPKO STORES, INC.

By their attorneys,



Mark Schonfeld (BBO# 446980)
Burns & Levinson LLP
125 Summer Street
Boston, MA 02110
Telephone: (617) 345-3000
Facsimile: (617) 345-3299

Dated: October 21, 2005

ACCOUNTS PAYABLE SHOPKO STORES, INC.
PAMIDA

P.O. Box 19060
Green Bay, WI 54307-9060
(920) 497-2211

ATTACH

L7956	08/08/05	00000	EXP	10,000.00	0.00	10,000.00
				10,000.00	0.00	10,000.00

BINGHAM MCCUTCHEN LLP	9049109001	08/10/05	10,000.00	36347575
VENDOR NAME	VENDOR NUMBER	DATE	CHECK AMOUNT	CHECK NUMBER

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER AND MICROPRINTING IN THE SIGNATURE LINE



P.O. Box 19060
Green Bay, WI 54307-9060

FLEET MAINE, N.A.
SOUTH PORTLAND

ME 04104

52-153/112

CHECK NO.

36347575

DATE

08/10/05

VENDOR 9049109001

PA TEN THOUSAND DOLLARS AND 00 CENTS *****

TO THE ORDER OF

BINGHAM MCCUTCHEN LLP
ATTORNEYS FOR REGAL FABRIC
150 FEDERAL STREET
BOSTON MA 02110-

VOID OVER \$10,000.00

\$*****\$10,000.00

VOID AFTER 90 DAYS

Sr VP / Chief Financial Officer

THE REVERSE SIDE OF THIS DOCUMENT HAS FLUORESCENT FIBERS AND AN ARTIFICIAL WATERMARK. VIEW AT AN ANGLE

⑈36347575⑈ ⑆011201539⑆ 00802 16062⑈

Assurance

PO BOX 66941
CHICAGO
847 240-8000

IL 60666 0941

CHECK NUMBER: 1240454142
DATE ISSUED: 08/15/05
AMOUNT: 108,000.00

Please Include Claim Number On All Future Correspondence

CLAIM NUMBER: 524-0034035 001 JT TAX ID:
POLICY NUMBER: PPS39091344 INVOICE NUMBER:
DATE OF LOSS: 03/23/03 PYMT SERVICE DATES:
INSURED: Harbortown Division of IBR Corp.
CLAIMANT: Regal Fabric Inc
FILE SUPERVISOR: Jeff Sheriff PHONE NBR: 847 240-8000

NATURE OF PAYMENT: Full & Final Settlement
ATTACHMENT INSTRUCTIONS:


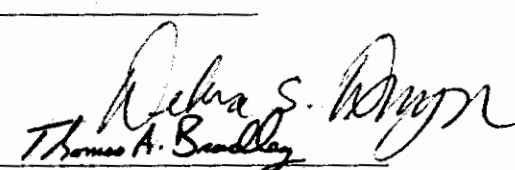
PAYMENT DESCRIPTION	AMOUNT PAID
BOP LIAB ALL OTHER	108,000.00

ISSUED TO: TOTAL: 108,000.00
Regal Fabrics, Inc. and Bingham McCutchen, their attorneys

Mark Schonfeld c/o Burns & Levinson LLP
125 Summer St.
Boston MA 02110

REQUESTED BY: Jeff Sheriff

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

 ZURICH ZURICH AMERICAN INSURANCE COMPANY ON BEHALF OF Assurance		CHECK NO. 1240454142 70-2302/719
PO BOX 66941 CHICAGO IL 60666 0941	DATE ISSUED: 08/15/05 VOID AFTER 180 DAYS	
CLAIM NUMBER: 524-0034035 001 JT		
AMOUNT: ONE HUNDRED EIGHT THOUSAND AND 00/100 ----- Dollars		
Pay to the Order of <u>Regal Fabrics, Inc. and Bingham McCutchen, their attorneys</u> \$108,000.00		
<div style="text-align: right;">  <u>Thomas A. Bradley</u> </div>		
LASALLE BANK NA CHICAGO IL 60603		

THE BACKGROUND IS COLORED